IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 22.01.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice N.PAUL VASANTHAKUMAR

Writ Appeal No.1781 of 2003

I.K.Lodi … Appellant

Vs.

1. The Appellate Authority
under Tamil Nadu Shops &
Establishments Act,
D.M.S. Compound,
Teynampet,
Chennai-600 006.

2. Bharat Overseas Bank Ltd.,
rep. by its Deputy General Manager,
Head Office,
Anna Salai,
Chennai-600 006. … Respondents

Appeal filed under clause 15 of Letters patent Act against the Order of this Court, dated 01.04.2003, made in W.P. No.9537 of 1997 to issue a writ of certiorari calling for the records of the first respondent relating to his order dated 24.2.97 made in TSE No. 36/95 and quash the same.

For Appellant : Mr.N.G.R. Prasad,
for M/s.Row & Reddy.

For R-2 : Mr.T.K.Seshadri, Senior Counsel
for Mr.T.K.Baskar

For R-1 : Mr.K.Elango, Special
Government Pleader

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(Judgment of the Court, delivered by P.SATHASIVAM, J.)

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The above Writ Appeal is directed against the Order of the learned single Judge, dated 01.04.2003, passed in W.P. No.9537 of 1997, in and by which, the learned Judge set aside the order of the Appellate Authority under the Tamil Nadu Shops and Establishments Act and allowed the Writ Petition filed by the Management – Bharat Overseas Bank.

2. According to the 2nd respondent/Bank, it is a banking company incorporated under the provisions of the Companies Act, 1956, and licenced to carry on business as a Banking Company under the Banking Regulation Act, 1947. It has its Head Office at Chennai-2. The appellant herein joined the services of the Bank as a Clerk and he was promoted in the year 1988 as an Officer. He was later on transferred and posted as Accountant at Burra Bazar Branch, Calcutta. One K.Raghunath was the Manager of the said Branch from 31.07.1989 to 22.10.1990 while the appellant was the Accountant from 23.05.1988 to 03.11.1990. According to the Bank, during their tenure of office at Burra Bazar Branch, K.Raghunath and the appellant, acting in collusion and conspiracy with certain private parties, dishonestly misappropriated/defrauded the money of the Bank under the pretext of granting advance/credit facilities to customers causing heavy loss to the Bank.

Criminal proceedings against the Manager and the appellant/accountant are still pending before appropriate court. Apart from the criminal proceedings, the Bank issued a charge sheet dated 08.11.1991. An enquiry officer was appointed, who, after conducting the enquiry, submitted his report dated 03.07.1993 to the Bank. The Disciplinary Authority, acting on the Enquiry Officer's Report, ultimately passed an order dated 19.07.1993, dismissing the appellant from service. In terms of the Rules, the appellant preferred an Appeal to the Board of Directors of the Bank against the order dated 19.07.1993 of the Disciplinary Authority. The Board of Directors considered the appeal and, after finding no ground to interfere, dismissed the same. Thereafter, the appellant preferred an appeal before the Appellate Authority under Section 41 (2) of the Tamil Nadu Shops and Establishments Act, 1947 (hereinafter referred to as Act). The Appellate Authority, after finding that the order, dismissing the appellant from service, was illegal and unjustified, by order dated 24.02.1997, set aside the order of dismissal dated 19.07.1993. Aggrieved by the order dated 24.02.1997 of the Appellate Authority under the Act, the Bank moved this Court by way of W.P. No.9537 of 1997.

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3. The learned Judge, disagreeing with the conclusion arrived at by the Appellate Authority and accepting the case of the Bank, set aside the order of the Appellate Authority and confirmed the order of dismissal dated 19.07.1993 passed by the Disciplinary Authority. Questioning the said order, the appellant has filed the present Appeal.

4. Heard Mr. N.G.R.Prasad, learned counsel for the appellant, and Mr.T.K.Seshadri, learned Senior Counsel for the Bank.

5. The point for consideration in this Appeal is as to whether the learned Judge is justified in interfering with the order of the Appellate Authority and whether the order of dismissal is sustainable in the facts and circumstances of the case.

6. When the appellant was working as Accountant in Burra Bazaar Branch, Calcutta, following 4 charges have been levelled against him,

> " STATEMENT OF CHARGES
>
> Charge No.1: Mr.I.K.Lodi acted in violation of Advances Circular No.68/89 dated 23.5.1989 by failing to report to the Head Office the huge amount of advances granted by Mr.K.Raghunath to (1) Ganpat Oil & Dall Mill, (ii) Park Mount Timbers, (iii) Shalimar Fastenings, (iv) R.K.Enterprises, (v)Suresh Mittal, (vi) Veekay Industries, (vii) Muli Devi Agarwal and (viii) Jhunjhunwala Industries.
>
> Charge No.2: Mr.I.K.Lodi granted advances to (i)Suresh Mittal, (ii) Veekay Industries and (iii) R.K.Enterprises in the absence of any power or authority vested in him by the bank.
>
> Charge No.3(a): Mr.I.K. Lodi signed the documents execution register in the case of the accounts of (i) Muli Devi Agarwal, (ii) Jhunjhunwala Industries, (iii) Ganpat Oil & Dall Mill and (iv) Park Mount Timbers without verifying whether or not the securities and the documents specified therein were actually obtained.
>
> Charge No.3(b): In the case of Park Mount Timbers, Mr.I.K. Lodi, signed the documents execution register as if the relative entry was made on 23.4.90 while as a matter of fact he was on leave on that day.
>
> Charge No.4: Mr.I.K. Lodi has failed to discharge his duties with utmost care, caution, diligence and honesty expected of an officer of the Bank as a result of which the Bank is facing an

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actual loss of Rs.42,42,086.03 plus the interest accruals."

Based on the above charges, the enquiry was conducted. It was true that the appellant participated in the enquiry and got examined himself. The Enquiry Officer, after affording opportunity to both sides, based on the materials placed, found charge Nos.1, 2 and 3 (a) partly proved; and charge Nos.3(b) and 4 proved in toto. The Disciplinary authority, after considering the Enquiry Report, agreed with the findings of the Enquiry Officer and, by holding that the charges proved against appellant/I.K. Lodi are serious enough to merit the imposition of the extreme penalty, passed an order dismissing him from service of the Bank with immediate effect in terms of Rule 37(ii)(i) of the Bharat Overseas Bank Limited Officers Conduct, Discipline & Appeal Rules, 1990.

7. As said earlier, though the appellant preferred an appeal to the Board of Directors, the same was dismissed. It is not in dispute that Section 41(2) of the Act enables the employee to challenge the order of dismissal before the Appellate Authority. It is useful to refer to the relevant provision,

> " 41. Notice of dismissal.—(1) No employer shall dispense with the services of a person employed continuously for a period of not less than six months, except for a reasonable cause and without giving such person at least one month's notice or wages in lieu of such notice, provided however, that such notice shall not be necessary where the services of such person are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose.
>
> (2) The person employed shall have a right to appeal to such authority and within such time as may prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer.
>
> (3) The decision of the appellate authority shall be final and binding on both the employer and the person employed. "

It is clear from sub-Section(2) that, if there was no reasonable cause for dispensing with the services of a person employed or he had not been guilty of misconduct as held by the employer, the Appellate Authority is free to interfere with the order of dismissal. Sub-section(3) makes it clear that the decision of the

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Appellate Authority shall be final and binding on both the employer and the person employed. It is settled law that normally the High Court and even the Supreme Court would not interfere with the findings of fact recorded at the domestic enquiry, but, if the finding of 'guilt' is based on no evidence, it would be perverse finding and would be amenable to judicial scrutiny, vide Kuldeep Singh vs. Commissioner of Police (1992 (2) SCC 10).

8. With reference to the issue involved, we perused each charge, materials placed by the Management/Bank, plea of the appellant and the conclusion arrived at by the Enquiry Officer as well as the Appellate Authority. It is also relevant to mention that the Appellate Authority under the Act considered each of the charges in detail, examined the evidence both documentary and oral and arrived at the conclusion that the charges against the appellant/employee had not been established.

9. Learned counsel appearing for the appellant has brought to our notice that, as per Bharat Overseas Bank Limited Officers Conduct, Discipline & Appeal Rules, 1990, every officer shall at all times take all possible steps to ensure and protect the interests of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a Bank Officer. The Rules also make it clear that every officer shall observe, comply with and obey all orders and directions which may from time to time be given by any person or persons under whose superintendence or control he may for the time being be placed.

10. In the light of the provisions of the Act and Disciplinary Rules, let us consider the findings of the Enquiry Officer, conclusion of the Disciplinary Authority as well as the order passed by the Appellate Authority and the order of the learned Judge.

11. Charge No.1 was that the advances granted to the parties were not brought to the notice of the Head Office. With regard to the said charge, apart from the statement of the appellant, Ex.D.10 was produced before the Enquiry Officer to establish that the Branch Manager had brought to the notice of the Head Office the advances so made, and therefore, no lapse could be attributed to the appellant.

In this regard, it is relevant to refer to Advances Circular No.68/89, dated 23.05.1989, issued by Bharat Overseas Bank Limited. Clause-3 of the said Circular reads as under:-

> " 3. Incidentally, we also wish to add that wherever it is noticed that matters of the above

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nature are not reported to Head Office for a period of over say 7 days by the Manager, it will be the responsibility of the branch Accountants to bring such instances to the notice of the Head Office in writing failing which, branch Accountants will be held personally accountable for not reporting the matter to Head Office. …"

It is clear that, in respect of grant of excess drawings as well as omission, at the first instance, it is obligatory on the part of the Manager to intimate such aspects to the Head Office and if no such intimation was passed on by the Manager within a period of 7 days, then, it would be the responsibility of the Branch Accountant to bring such instances to the notice of the Head Office in writing, failing which, the Branch Accountant will be held personally responsible for not reporting the matter to the Head Office.

As said earlier, Ex.D.10, produced by the appellant before the Enquiry Officer, clearly shows that the Branch Manager had brought to the notice of the Head Office of the advances so made and in view of the said fact there was no lapse as alleged on the part of the appellant. To put it clear, only in the absence of formal intimation by the Manager, duty is cast on the Accountant to intimate the details to the Head Office. The Appellate Authority, after considering this aspect in detail, rightly disagreed with the findings of the Enquiry Officer. It is also useful to mention that the Circular does not make it obligatory that each and every transaction is to be brought to the notice of the Head Office. On going through the relevant details, particularly Ex.D.10, and the statement of the appellant as well as the Circular, which we have referred to, we are in entire agreement with the conclusion arrived at by the Appellate Authority in respect of charge No.1.

12. Coming to Charge No.2 with regard to passing of cheque for Rs.5,00,000/- to one Suresh Mittal, it is the case of the appellant that it was done under the instructions of the Branch Manager and, admittedly, on the same day, the party had brought in a fixed deposit receipt from third parties to the tune of Rs.10,00,000/-, whereupon, the Branch Manager had sanctioned a loan of Rs.7,50,000/- on 28.06.1990 itself, in such circumstances, the allegation relating to Suresh Mittal cannot be sustained.

The appellant, apart from his oral evidence, also produced Exs.D-16 and M-3. Ex.D-16, which is filed in the typed set of papers, clearly shows that, on the very same day, the party had brought the required security viz., F.D. receipt from third parties to the tune of Rs.10,00,000/-, and, in fact, based on the same, the Branch Manager had sanctioned a loan of Rs.7,50,000/-.

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This is evident from Ex.D-16 and M-3 as well as the oral evidence of the appellant. All these material aspects have been rightly considered; hence, we are in entire agreement with the conclusion arrived by the Appellate Authority.

It is also brought to our notice that the cheque was passed not only by the appellant but also by one Kanwal Chopra, Current Accounts Officer, as could be seen from Ex.D1, however, no action was taken against him.

13. With regard to passing a cheque for Rs.2,00,000/- in favour of Veekay Industries on 05.06.1990, here again, apart from the oral evidence of the appellant, there is documentary evidence in the form of Ex.D13, which amply shows that the amount had come in on 05.06.1990 itself, and there was also an explanation that, since it was after the cash transaction for the day was closed, the amount was kept in the Bank and taken up as the first item on the next day. Mr.N.G.R.Prasad, learned counsel appearing for the appellant, has brought to our notice the relevant entries in Ex.D-13, in those circumstances, the Appellate Authority rightly accepted the evidence of the appellant, finding that the charge relating to Veekay Industries was not established. As rightly pointed out, there was no contra evidence on the side of the Bank.

14. With regard to passing of cheque of Rs.3,00,000/-, it is the assertion of the appellant that he had passed the same only under the instructions of the Branch Manager. Admittedly, the Branch Manager was not examined on the side of the Management and no contra evidence was available. Further, the said amount was also mentioned in the cheque referred register viz., Ex.M3, which amply shows that it was done under the instructions of the Branch manager. A copy of M3 is available in the typed set of papers which substantiates the above stand. In addition to the same, Rs.1,00,000/- was transferred from the S.B. Account of the party on the same day and Rs.2,00,000/- was brought on the next day. All these details are available in the documents which are in the custody of the Bank. In those circumstances, the Appellate Authority is perfectly right in concluding that it was a business transaction done under the instructions of the Branch Manager and, in fact, there was no loss to the Bank or anyone. We concur with the said conclusion.

15. Coming to Charge No.3(a), as rightly pointed out by the Appellate Authority, the Enquiry Officer himself, in his findings, had stated that there was absolutely no evidence to support the charge that the appellant did not verify the existence of the document. As rightly pointed out by the learned counsel for the appellant, the Enquiry Officer, having said so, is not justified in finding the appellant guilty of the said charge. On

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the other hand, the Appellate Authority, after finding that there is no contra evidence, accepted the appellant's evidence that, only after verifying the documents, he had signed the Register. There is no reason to reject the said conclusion.

Further, as rightly observed by the authority, the two witnesses examined by the Bank, viz., V.R.Sridhar and A.Sadagopal, were not competent to testify the allegations, because V.R.Sridhar worked in Burra Bazaar Branch for just two months after the alleged incident and A.Sadagopal was an officer of the Advance Department in the Head Office, in those circumstances, as correctly observed by the Appellate Authority, reliance placed on the evidence of those two witnesses is not proper and relevant to the issue in question. We are in agreement with the observation and conclusion arrived at by the Appellate Authority.

16. With regard to charge No.3(b), it is the case of the appellant that, though he was on leave on 23.04.1990, he had signed the Documents Execution Register on the next day under the instructions of the Branch Manager that too after verifying the documents. As rightly observed by the Appellate Authority, the said act did not mean that he signed it deliberately as if it was on 23.04.1990. Further, the entire evidence of the appellant in respect of the said charge makes it clear that he has simply obeyed the instructions of his Master, ie., Branch Manager. Further, if the then Manager K.Raghunath was enquired as a witness, he would have thrown more light on the issue, which exercise the Bank has, for the reasons best known to them, failed to take upon. Though the Accountant owes independent responsibility, at the same time, necessarily, he has to implement the directions and orders of the Branch Manager. In those circumstances, it is but proper on the part of the Bank to have examined the Manager. It is true that the Branch Manager was also charge sheeted. That being so, failure to examine him before the Enquiry Officer is fatal to the charges levelled against the appellant.

17. Insofar as charge No.4 is concerned, it is nothing but summarising charge Nos.-1 to 3. In view of the conclusion that Charge Nos.1 to 3 were not proved by satisfactory evidence, the same conclusion is applicable to charge No.4.

18. The order of the Appellate Authority makes it clear that it has analysed all the materials including oral and documentary evidence and came to the conclusion that all the four charges levelled against the appellant have not been proved through satisfactory evidence. Yet another reason pointed out by the Appellate Authority is that the Bank has not furnished a copy of the findings of the Enquiry Officer to the appellant before effecting dismissal which the Bank has also not denied. It is not

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in dispute that the appellant is entitled to a copy of the entire Report before being inflicted with any punishment. As rightly pointed out by the Authority, had the findings of the Enquiry Officer been furnished to the appellant, he would have been in a better position to furnish his detailed explanation as to the proposed punishment. Inasmuch as the findings of the Enquiry Officer were furnished only after the order of dismissal, we hold that it has prejudiced the appellant in rendering an effective explanation. This aspect was also considered by the Appellate Authority to hold against the bank.

19. Though the learned Judge has referred to all the details, viz., charges, explanation of the appellant, and findings of the Enquiry Officer, as rightly pointed by the Mr.NGR.Prasad, learned counsel for the appellant, he has failed to advert to the vital aspects, viz., assertion of the appellant in the form of oral evidence and documents, which are all in the custody of the bank, and other relevant factors depicting his innocence.

20. The learned Judge proceeded on the basis that the appellant, being a responsible officer of the Bank, owes more responsibility to the Bank and merely accepted the action taken by the Disciplinary Authority. On the other hand, the Appellate Authority went into all the aspects, viz., oral and documentary evidence, analysed the same with reference to each charge and found that there was no lapse on the part of the appellant. It is also clear from the factual findings that the appellant, being Accountant, was bound to act on the instructions of the Branch Manager. In fact, he acted on his oral instructions and, even if there was any flaw or deviation, as seen from the documentary evidence, the same was either rectified on the same or on the next day. Thus, we are in entire agreement with the conclusion of the Authority and unable to accept the contrary conclusion of the learned Judge.

21. We have already pointed out that sub-Section 3 of Section 41 of the Act makes it clear that the decision of the Appellate Authority shall be final and binding on both the parties. Further, it is not the case of the Bank that the Appellate Authority has not looked into the oral and documentary evidence, on the other hand, the authority considered each charge with reference to the oral and documentary evidence let in by both sides and on proper appreciation of the materials, arrived at a specific conclusion, in such circumstances, as observed in the decision reported in 1992 (2) SCC 10 (cited supra), it is not a case of 'no evidence' or 'perverse finding' for interference by the learned Judge, exercising jurisdiction under Article 226 of the Constitution of India.

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22. We are unable to endorse the views expressed by the learned Judge in para No.8.11 that the order of the Authority is not supported with any reason, on the other hand, as observed earlier, the Appellate Authority considered the case of both sides, and only after analysing the materials, arrived at the conclusion that the charges have not been established. The Appellate Authority has also taken note of the fact that the limits that were sanctioned on the very day or the amounts that had come in on the very day for the transactions were based on business prudence by the Branch Manager. Further, as rightly pointed out, the learned Judge has not considered the material fact that the appellant was not supplied with a copy of the Enquiry Officer's Report before passing an order dismissing him from service. If the report had been given, he would have been able to show that the charges levelled against him were baseless and that he had acted only on the instructions of the Branch Manger by pinpointing the relevant documents. It is also relevant to mention that the Appellate Authority had taken note of non-examination of the Branch Manger as one of the relevant factors to set aside the order of dismissal. All these relevant and vital aspects have not been properly appreciated by the learned Judge.

23. In these circumstances, the order of the learned Judge dated 01.04.2003 is set aside and the order of the Appellate Authority dated 24.02.1997 is confirmed. Writ Appeal is allowed. No costs.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Appellate Authority,
under Tamil Nadu Shops &
Establishments Act,
D.M.S. Compound,
Teynampet, Chennai-600 006.

2. The Deputy General Manager,
Bharat Overseas Bank Ltd.,
Head Office, Anna Salai,
Chennai-600 006.

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+ 1 cc to Mr. T. K. Bhaskar, Advocate SR No. 3819

+ 1 cc to M/s. Row & Reddy, Advocate SR No. 3803

SSV(CO)
SR/1.2.2007 Judt.
in WA.1781/2003.

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